

Agenda

Item #5



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commissioners

From: Jonathan Wayne, Executive Director

Date: January 19, 2011

Re: Fundraising for PACs by Maine Clean Election Act Candidates

Joseph Baiungo wishes to present to you his objections to Maine Clean Election Act candidates (PACs) forming political action committees that they control and raising money for those PACs. This memo is to provide you with some background on this issue, along with a policy perspective from the Commission staff.

Maine Clean Election Act (MCEA) candidates are forbidden from raising money for their own election campaigns in subsection 6 of 21-A M.R.S.A. § 1125, the statute that sets forth the terms and conditions for participation in the program. The statute is silent on whether MCEA candidates may be involved in PACs or raise money for PACs. As long as a candidate is not taking part in PAC spending to promote the candidate's election, the Commission has advised that there is currently no prohibition to MCEA candidates forming PACs or fundraising for PACs.

Some experienced Legislators and even some new candidates form PACs that they solely control. These are generally referred to as "leadership PACs." In addition, each of the four legislative caucuses has a PAC that is dedicated to electing the caucus's candidates (*e.g.*, Senate Democratic Campaign Committee, or the House Republican Fund). These PACs are typically controlled collectively by the leaders of the caucus, sometimes with the participation of other members of the caucus. The Commission staff usually refers to these PACs as "caucus PACs," although that is not a generally used term.

Since I joined the Commission in 2003, I have heard Mr. Baiungo's criticism from a number of sources, and I recognize the inconsistency to which he is referring. Some have raised a related concern that it is inconsistent to impose a low contribution limit of \$350 on traditionally financed legislative candidates (to avoid undue influence or corruption) while allowing them to raise unlimited funds for a PAC that they control.

In my view, this is a perennial policy question that is best left to the Legislature. Since 2005, there have been legislative proposals to address the issue, but none have been enacted.

Some legislative supporters of the Maine Clean Election Act system have responded to the criticism raised by Mr. Baiungo by noting that – for better or worse – raising money for the political activities of one's caucus is a duty of caucus leadership. If the Legislature puts roadblocks in the way of MCEA candidates raising money for PACs, that could unfairly disadvantage MCEA candidates who aspire to leadership which could ultimately weaken support for the MCEA program among legislative leaders. Personally, I think this is a policy concern that is worth considering, although I am not sure that it should carry the day.

The list of bill titles for the 2011 session was just published. There are a large number of bills that seek to reform the MCEA program. Based on the titles, however, I cannot tell whether they address the issue raised by Mr. Baiungo.

Thank you for your consideration of this memo, which reflects my own perspective.

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11 January 2011

Mr. Walter McKee
Commission Chair
Maine Ethics Commission
135 State House Station
Augusta, Maine 04333

Re: Maine Clean Elections Act

Dear Mr. McKee:

I am writing to request that I have the opportunity to address the commission at its next meeting concerning your recommendations to the legislature on the Maine Clean Election Act. I was disturbed to learn that MCEA candidates receive public money in exchange for the promise to not accept private contributions for their campaign, but those same candidates can then set up their own Political Action Committee, and solicit contributions to promote their own political agenda.

I think it is unconscionable that it has become a common practice for candidates to accept public money under the guise of being free from influence, only to then turn around and solicit contributions (of unlimited amounts) for a cause they support. It is nonsensical that my \$350 contribution to a candidate's campaign could buy influence but my \$10,000 contribution to his PAC cannot.

I will be asking the Commission to recommend to the legislature that it make a change to the MCEA to prohibit any MCEA candidate from soliciting or accepting contributions of any type. A candidate should fully commit to be free from all influence that goes along with fundraising if he/she is going to accept public money being diverted from other needy causes. If a candidate is comfortable soliciting contributions for PACs and others, then he/she can do it for himself/herself.

Respectfully,


Joseph Baiungo

candidate may appeal the commission's decision to revoke certification in the same manner provided in subsection 14, paragraph C.

[2009, c. 363, §6 (AMD) .]

5-B. Restrictions on serving as treasurer. A certified candidate may not serve as a treasurer or deputy treasurer for that candidate's campaign.

[2007, c. 642, §11 (NEW) .]

 **6. Restrictions on contributions and expenditures for certified candidates.** After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. A television advertisement purchased with these revenues must be closed-captioned when closed-captioning is available from the broadcasting station who will broadcast the advertisement. The commission shall publish guidelines outlining permissible campaign-related expenditures.

[2009, c. 105, §1 (AMD) .]

6-A. (TEXT EFFECTIVE UNTIL 9/1/11) Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8 for certified candidates in a contested election.

[2007, c. 443, Pt. B, §6 (NEW) .]

6-A. (TEXT EFFECTIVE 9/1/11) Assisting a person to become an opponent. A candidate or a person who later becomes a candidate and who is seeking certification under subsection 5, or an agent of that candidate, may not assist another person in qualifying as a candidate for the same office if such a candidacy would result in the distribution of revenues under subsections 7 and 8-A for certified candidates in a contested election.

[2009, c. 302, §12 (AMD); 2009, c. 302, §24 (AFF) .]

6-B. Expenditures as payment to household members.

[2009, c. 302, §13 (RP) .]

6-C. Expenditures to the candidate or family or household members. Expenditures to the candidate or immediate family member or household member of the candidate are governed by this subsection.

A. The candidate may not use fund revenues to compensate the candidate or a sole proprietorship of the candidate for campaign-related services. [2009, c. 302, §14 (NEW) .]

B. A candidate may not make expenditures using fund revenues to pay a member of the

21-A MRSA §1122. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 1, §17 (NEW) .]

1. Certified candidate. "Certified candidate" means a candidate running for Governor, State Senator or State Representative who chooses to participate in the Maine Clean Election Act and who is certified as a Maine Clean Election Act candidate under section 1125, subsection 5.

[1995, c. 1, §17 (NEW) .]

2. Commission. "Commission" means the Commission on Governmental Ethics and Election Practices established by Title 5, section 12004-G, subsection 33.

[1995, c. 1, §17 (NEW) .]

3. Contribution. "Contribution" has the same meaning as in section 1012, subsection 2.

[1995, c. 1, §17 (NEW) .]

4. Fund. "Fund" means the Maine Clean Election Fund established in section 1124.

[1995, c. 1, §17 (NEW) .]

4-A. Immediate family. "Immediate family" has the same meaning as in section 1, subsection 20 and includes a candidate's domestic partner and the immediate family of the candidate's domestic partner.

[2007, c. 443, Pt. B, §1 (NEW) .]

5. Nonparticipating candidate. "Nonparticipating candidate" means a candidate running for Governor, State Senator or State Representative who does not choose to participate in the Maine Clean Election Act and who is not seeking to be certified as a Maine Clean Election Act candidate under section 1125, subsection 5.

[1995, c. 1, §17 (NEW) .]

6. Participating candidate. "Participating candidate" means a candidate who is running for Governor, State Senator or State Representative who is seeking to be certified as a Maine Clean Election Act candidate under section 1125, subsection 5.

[1995, c. 1, §17 (NEW) .]

7. Qualifying contribution. "Qualifying contribution" means a donation:

A. Of \$5 or more in the form of a check or a money order payable to the fund and signed by the contributor in support of a candidate or made over the Internet in support of a candidate according to the procedure established by the commission; [2009, c. 286, §4 (AMD) .]

B. Made by a registered voter within the electoral division for the office a candidate is seeking and whose voter registration has been verified according to procedures established by the commission; [2009, c. 190, Pt. B, §1 (AMD) .]